CORRECTED COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No.____, Original

STATE OF LOUISIANA,

Plaintiff,

vs.

CLAUDE CUMMINS, ET ALS.,

Defendant.

MOTION FOR LEAVE TO FILE ORIGINAL COMPLAINT IN UNITED STATES SUPREME COURT AND BRIEF IN SUPPORT THEREOF AND ORIGINAL COMPLAINT.

EUGENE STANLEY,
Attorney General,
State of Louisiana;
JAMES J. MORRISON,
Special Assistant Attorney General;
JAMES J. MORRISON,
Executive Counsel.
Louisiana Crime Commission;
N. HALL MCCORD,
Of Counsel.

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Defendant.

MOTION FOR LEAVE TO FILE ORIGINAL COMPLAINT IN UNITED STATES SUPREME COURT AND BRIEF IN SUPPORT THEREOF AND ORIGINAL COMPLAINT.

Motion for leave to file original complaint in the Supreme Court, within the original jurisdiction of the Supreme Court as provided for by Article III, Section 2, of the Constitution of the United States.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now into Court comes the State of Louisiana, through its Attorney General, Eugene Stanley, and through its Commission created by Act 13 of the Louisiana Legislature of 1940, represented by its Executive Counsel and Special Assistant Attorney General, James J. Morrison, and moves

the Court for leave to file a complaint in the above numbered and entitled cause, in a controversy which has arisen between the said plaintiff, the State of Louisiana, and the said Claude Cummins, and others, defendants, growing out of the illegal, unlawful and fraudulent receipt of public funds by the said defendants under construction contracts illegally and fraudulently procured from agencies of the State of Louisiana, and other acts and things alleged in said complaint, and arising under the Constitution and laws of the United States, for the purpose of allowing the said Court to pass upon the issues; and that proper process may issue thereon notifying the defendants of the filing of said complaint, and requiring that they appear and answer thereto and defend the same.

And your plaintiff, the State of Louisiana, further moves the Honorable Court to appoint a special general master in said cause to take testimony and report the findings of fact and conclusions of law on the issues between the parties, and report the same to the Court, the ground of said motion being that the testimony is voluminous and contains matters of accounting, payments, collections and disbursements, which will make the appointment of such special general master necessary.

Dated, May 26, 1941.

EUGENE STANLEY,
Attorney General, State of Louisiana,
By JAMES J. MORRISON,
Special Assistant Attorney General,
JAMES J. MORRISON,
Executive Counsel, Louisiana Crime Commission.

Washington, D. C.

James J. Morrison, Special Assistant Attorney General of the State of Louisiana, and Executive Counsel of the

Louisiana Crime Commission, being duly sworn, on his oath says that he has read the foregoing motion; that the matters and things therein contained are true both in substance and fact.

—— ——.

Brief on Motion for Leave to File Petition.

As cause for this motion, it is respectfully shown:

1. That this cause involves a controversy between the State of Louisiana and individuals and corporations, citizens and residents of states other than Louisiana. As to these defendants and companies, there can be no question but that the original jurisdiction of the Supreme Court extends to them under the provisions of Article 3, section 2, Clause 2 of the United States Constitution.

2. That the State of Louisiana is the party plaintiff and is the real party in interest appearing herein to protect the public fisc of the State of Louisiana. The power of the State of Louisiana so to appear has been especially upheld by the Louisiana Supreme Court in a number of cases, one of the most recent of which is *State* v. *Walmsley,* 181 La. 597, 160 So. 91 (1935). Moreover the State of Louisiana is especially empowered to maintain a suit for recovery such as the present by Act 13 of the Legislature of 1940 which provides in section 3B:

> "That any of the agents or representatives of the Commission, when specifically authorized by it, and/or the Attorney General, under the Constitution and laws of the State, is vested with the authority, power, and duty to institute and prosecute, or cause to be instituted and prosecuted, civil proceedings in the name of the State of Louisiana, for the recovery and return of * * * any moneys, property or thing of value that may have been fraudulently, unlawfully, or without author-

ity appropriated, diverted, expended or disbursed by, or taken or acquired from the State;

Section 2 of said act defines the word "state" to mean and include "all of the governmental departments thereof, * * * all public boards and commissions * * *." Moreover, Act 44 of the Louisiana Legislature of 1940, the Appropriations Act, provides that the appropriations made in this section shall be paid out of the State General Fund only on condition that there shall be deposited in the State Treasury to the account of the State General Fund all "unincumbered balances" of cash held June 30, 1940. It is apparent that the sums claimed in this suit are "unincumbered balances" which under the provisions of Act 44 of 1940, section 2, revert to the general fund of the State. The fisc of the State of Louisiana is therefore directly interested in a number of ways in the sums sought to be recovered in this case, and, under the *Walmsley* case above referred to, is entitled to prosecute this suit.

3. That this case is of a justiciable character, of a civil nature, and is instituted to enforce the recovery of property due to the State of Louisiana.

4. That this is not a suit to enforce a penalty under the State law, and the nature of the controversy does not call for a judgment on a political or governmental question.

5. That no service of process can be had within the State of Louisiana upon either the corporate or individual defendants (except defendant Shushan) or any of its officers or agents.

6. That most of the witnesses necessary to the proof of the claims asserted herein are beyond reach of the State of Louisiana.

7. That the complaint stated against Abraham L. Shushan is completely severable from the complaints stated against

the other defendants in this case. That the suit can be carried on and successfully prosecuted against the defendants other than Abraham L. Shushan even should it become necessary in order to maintain the original jurisdiction of the United States Supreme Court to dismiss this case as against said Abraham L. Shushan. That if, however, the State of Louisiana is forced to dismiss this suit as against Abraham L. Shushan in order to maintain it against the other defendants herein, the State of Louisiana will be put to the trouble, expense, and complete duplication of effort in bringing another and separate suit against Shushan on precisely the same facts and issue and requiring precisely the same evidence and proof as must be adduced in the case at bar against the other defendants. The United States Supreme Court has asserted original jurisdiction in suits by states against citizens of other states wherein citizens of the plaintiff states have been joined as co-defendants in a separable controversy. The attention of the Court is called particularly to the case of *Ohio* v. *Helvering*, 292 U. S. 360, 78 L. Ed. 1307, 54 S. Ct. 725 (1934), in which the Court assumed jurisdiction and decided the case on its merits where such circumstances were present. Indeed, this is the universal rule in the Federal district courts under the Act of March 3, 1875, title 28, of the Judicial Code; 28 U. S. C. A. § 71. See *Barney* v. *Latham*, 103 U. S. 205, 26 L. Ed. 514 (1884); *Geer* v. *Mathieson Alkali Works*, 190 U. S. 428, 47 L. Ed. 1122, 23 S. C. 807 (1902); *Gainesville* v. *Brown-Crummer Co.* 277 U. S. 54, 72 L. Ed. 781, 48 S. C. 454 (1927). In the cases earlier than *Ohio* v. *Helvering, Supra*, involving the original jurisdiction of the United States Supreme Court the citizen of the State attempting to invoke such original jurisdiction was invariably an indispensable party. See *Pennsylvania* v. *Quicksilver Mining Co.*, 10 U. S. 553, 19 L. Ed. 998 (1870); *California* v. *Southern Pacific Company*, 157 U. S. 229, 39 L. Ed. 683, 15 S. C. 591 (1895); *New Mexico*

v. *Lane*, 243 U. S. 52, 61 L. Ed. 588, 37 S. C. 348 (1919). The dissenting opinion of Mr. Justice Harlan, concurred in by Mr. Justice Brewer in *California* v. *Southern Pacific Company*, which, as pointed out above, involved an indispensable party, cogently states the considerations involved in the United States Supreme Court accepting jurisdiction in cases such as the case at bar. Mr. Justice Harlan said:

> "It seems to me that according to both the letter and the spirit of the Constitution this court cannot refuse to exercise its original jurisdiction over a controversy between a State and a citizen of another State, because a citizen of the plaintiff State has or may assert some interest in the subject-matter of that controversy; and that in such a case it is our duty either to permit the latter citizen to be heard without becoming a party of record if thereby our jurisdiction would be defeated, or proceed to a decree between the original parties to the controversy, leaving unaffected, in law, the rights of others.
>
> Our constitutional duty is to determine the 'case' in which the State is a party, taking care to give all who are interested in its determination a reasonable opportunity to produce evidence and to be heard in support of their rights. In this way only can we give full effect to the Constitution, and at the same time attain the ends of justice, unembarrassed by mere forms. We should not impose undue restrictions upon the right of the States to invoke our original jurisdiction. Jurisdiction to determine *all* cases to which the judicial power of the United States extends, in which a State is a party, gives authority to decide every controversy that arises in such cases, the determination of which is either necessary or proper in order to dispose of the case in which it arises.
>
> If this be not a sound interpretation of the Constitution, the result will be that this court will not, in any case, exercise its original jurisdiction over a case 'between two or more States,' if it appears that individual citizens have an interest in its determination. A

controversy capable of judicial solution may arise between two States, and it may be important to the peace of those States, indeed, of the whole country, that it should be determined by this court. But, under the interpretation of the Constitution adopted in this case, our jurisdiction cannot be invoked in any mode for its final settlement if it appears in evidence that some individual or corporation is interested in that settlement. Still more, although this court is given original jurisdiction of a case between one of the States of the Union and a foreign State, it will not exercise it even in such a case if individual parties are interested in the controversy * * *.

Under the ruling now made, how is the State of California to obtain a judicial determination of the controversy between it and this foreign corporation? It is said that a suit may be brought in one of its own courts against all persons asserting an interest in the property rights here in question. The effectiveness of such a suit would depend upon the ability of the State to bring the Kentucky corporation into court, so that it would be bound by the final decree. It may be that that corporation does business in California under the condition, among others, that it will have an agent there upon whom process can be served. But surely the duty of this court, under the Constitution, to exercise its original jurisdiction in respect to a controversy between a State and a corporation of another State can not depend upon the question whether the plaintiff State can compel that corporation to answer in its own courts. Suppose the defendant is an individual citizen of another State who cannot be served with process in the State desiring to bring suit against him. In such a case, the State must, under the principles now announced, be without a remedy for the protection of its rights, or it will be driven to sue its adversary in the courts of his own State, whose decision will be final, unless the controversy happens to involve some question of a Federal nature; and even then this court could only decide the Federal question presented, and must accept the decree of the state court as conclusive upon

all other questions. The State could not sue in any Circuit Court of the United States, for that court has no jurisdiction under the acts of Congress of a suit brought by a State against a citizen of another State, unless perhaps such suit be one arising under the Constitution or laws or treaties of the United States. The framers under any circumstances, to the indignity of being compelled to submit its controversies with citizens of other States to the courts of such other States. They opened the doors of this court to every State having a cause of action against a citizen of another State. In my judgment, we have no right to refuse a hearing to a State having such a cause of action, because of the circumstance that one or more of its people assert an interest in the subject-matter of its controversy with the defendant citizen of another State."

WHEREFORE, the complainant prays that this Honorable Court may exercise its original jurisdiction in this controversy as provided in the Constitution of the United States, Article 3, Section 2, Clause 2, and in the Judicial Code, Section 233 (28 U. S. C. A., 341).

EUGENE STANLEY,
Attorney General,
State of Louisiana,
JAMES J. MORRISON,
Special Assistant Attorney General;
JAMES J. MORRISON,
Executive Counsel,
Louisiana Crime Commission;
N. HALL MCCORD,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No.____, Original

THE STATE OF LOUISIANA,

Complainant,

vs.

CLAUDE CUMMINS, CLARENCE R. BIRCH, DREDGING REALIZATION CORPORATION OF NEW JERSEY, STANDARD DREDGING CORPORATION OF NEW JERSEY AND ABRAHAM L. SHUSHAN,

Defendants.

BILL OF COMPLAINT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

I. The complainant, the State of Louisiana, one of the United States of America, respectfully shows this Honorable Court that this complaint is brought by and on behalf of the State of Louisiana through its Attorney General, Eugene Stanley, and through its Commission created by Act 13 of the Louisiana Legislature of 1940, represented by its Executive Council and Special Assistant Attorney General, James J. Morrison, and thereupon shows the Court and alleges as follows:

Jurisdiction.

II. The defendant, Claude Cummins, is a citizen of the State of California and a resident of the City and State of New York; the defendant Clarence R. Birch is a resident and citizen of the State of New York; the defendant Dredging Realization Corporation is a corporation organized and existing under the laws of the State of New Jersey and a citizen thereof with its principal place of business located in the City of New York; the defendant, Standard Dredging Corporation, is a corporation organized and existing under the laws of the State of New Jersey and a citizen thereof, with its principal place of business located in the City of New York; the defendant, Abraham L. Shushan is a resident and citizen of the State of Louisiana.

III. This complaint is brought in the Supreme Court of the United States in the exercise of its original jurisdiction under Article III, Section 2, Clause 2 of the Constitution of the United States, on the ground that the complaint relates to a controversy between the State of Louisiana and citizens of other states in a separable controversy in which Abraham L. Shushan appears as a co-conspirator, said Abraham L. Shushan not being a necessary or indispensable party to the complaint herein against the other defendants, the complaint being dismissable as to him without in any way affecting this proceedings against the other parties thereto.

The Corporate Structure.

IV. The Board of Levee Commissioners of the Orleans Levee District (hereinafter called the Levee Board) is an agency of the State of Louisiana created by Act 93 of the Louisiana Legislature of the year 1890 and acts amendatory

thereto. The defendant, Abraham L. Shushan, became a member of the Board of Levee Commissioners of the Orleans Levee District on August 8, 1928 and was elected President on June 11, 1929, serving continuously as President thereof until his resignation November 14, 1935, which term included all of the acts and things complained of herein.

V. The acts hereinafter complained of arise with relation to a certain contract, attached hereto, for public works between the Levee Board and a corporation, since dissolved, known as Orleans Dredging Company, Inc. Complainant shows that the Orleans Dredging Company, Inc., a Louisiana corporation, was a wholly-owned subsidiary of Standard Dredging Company, a New Jersey corporation. Complainant further shows that on May 5, 1937 an agreement of merger and consolidation was filed with the Secretary of State of the State of New Jersey, whereby as of September 1, 1937 the name of the Standard Dredging Company was changed to that of the Standard Dredging Corporation, and the agreement of merger and consolidation hereinabove referred to further provided that the Standard Dredging Corporation assumed the liabilities of the Standard Dredging Company. The hereinabove mentioned agreement of merger and consolidation further provided that the Standard Dredging Corporation would thereupon become the owner of all of the capital stock of the defendant, Dredging Realization Corporation which corporation at one time owned all of the stock of the Orleans Dredging Company, Inc., and which said Orleans Dredging Company had, at the time of the acts complained of herein, as its officers, Claude Cummins, President and Clarence R. Birch, Assistant Secretary, who were also officers and directors of the other corporations named herein. Complainant avers that the Orleans Dredging Company, Inc., was in truth and in fact nothing more than a "dummy corporation"—a mere

sham or a cloak under which the parent corporation, Standard Dredging Company, and their directors operated in the State of Louisiana. Complaints show that during all of the time complained of herein, the defendants, Claude Cummins, and Clarence R. Birch and, until the time of his death in June of 1932, R. A. Perry, were the principal officers and directors, composing an interlocking directorate, of the corporations named above, and carried on the active management of their affairs. Complainant further shows that the accounts, obligations, funds and credits, particularly of Orleans Dredging Company, Inc. and Standard Dredging Company, were co-mingled indiscriminately, and funds and payments interchanged regardless of dividend declarations, upon the instructions of said R. A. Perry, and of defendants Cummins and Birch. Complainants therefore aver that the acts of Orleans Dredging Company, Inc. are the acts of Standard Dredging Company of New Jersey and Dredging Realization Corporation, defendant herein, and that the latter are responsible therefore to the same extent as if done by it or them. Complainants further show that all of the liabilities, debts, and obligations of said Standard Dredging Company, including the liability herein sought to be imposed, were expressly assumed by the Standard Dredging Corporation by virtue of the merger agreement referred to above. A photostatic copy of documents filed with the Securities and Exchange Commission by the Standard Dredging Corporation showing said merger agreement is attached hereto and made a part hereof and marked "Plaintiff 1" for identification.

The Airport Fill.

VI. Complainants show that by an amendment to the Louisiana Constitution adopted in 1930 (Art. 16, Sec. 76) the Levee Board was authorized and empowered to construct an airport on the shores of Lake Pontchartrain and

within the city limits of the City of New Orleans; that the construction of such an airport at the place selected involved the filling of a large area which was then swamp or covered by water, with approximately 6,479,780 cubic yards of earth fill. Complainants show that at a meeting of the Levee Board held February 21, 1931, copy of an extract from the minutes of which meeting is attached hereto and made a part hereof, and marked for identification "Plaintiff 2", Abraham L. Shushan, President of the Levee Board, recommended and urged upon the Levee Board, and, as a result thereof, was authorized by the Levee Board, to enter into a contract with the Orleans Dredging Company, Inc. for hydraulic fill for said airport at a price and sum of 13.9 cents per cubic yard for such fill. Complainants further show that on March 6, 1931, Abraham L. Shushan, on behalf of the Levee Board, did enter into and sign such a contract with the Orleans Dredging Company, Inc. at the price and sum aforesaid, as will more fully appear from a copy of the contract which is attached hereto and made a part hereof and marked for identification "Plaintiff 3". Complainants further show that, pursuant to said contract, the Levee Board paid out to the Orleans Dredging Company, Inc., or its assignees, the total sum of some $904,456.42 of the public monies of the State of Louisiana.

The Conspiracy.

VII. Complainants further show that, prior to February 21, 1931, the date of the meeting above referred to, and of the confection of the contract with the Orleans Dredging Company, Inc., the defendant Abraham L. Shushan, President of the Levee Board, and R. A. Perry (now deceased) then either President or a managing director of the Orleans Dredging Company, Inc. and of the Standard Dredging Company of New Jersey, with the full knowledge, consent and acquiescence of the defendants Cummins and Birch,

both of whom were managing officers and directors of both corporations, did all wrongfully, illegally, and fraudulently conspire together, and concoct and devise a scheme and artifice to defraud and to obtain money by fraudulent means and did defraud and obtain money by fraudulent means from the Levee Board and the complainant State of Louisiana and the taxpayers thereof, by illegally, fraudulently and wrongfully obtaining from the Levee Board the above-mentioned contract for the hydraulic fill of the said airport, to the unlawful advantage and enrichment of all of the defendants herein, of the Orleans Dredging Company, Inc., and Standard Dredging Company, and of R. A. Perry (now deceased); that as a part of said conspiracy to defraud, defendant Abraham L. Shushan, as President of the Levee Board, would and did submit and urge upon and influence the Levee Board to accept, and did use and assert his prerogatives and the influence and suasion of his office as President thereof to have the Board accept, the offer made through the Orleans Dredging Company, Inc. to supply the hydraulic fill at a price of 13.9 cents a cubic yard; that as a further part of said conspiracy to defraud, defendant Abraham L. Shushan, as President of the Levee Board, would and did urge and influence the Levee Board, and assert his influence and the authority and suasion of his office to persuade said Levee Board, from advertising said contract for public competitive bids, as required by the express law of the State of Louisiana under such circumstances, and this even although the President and the Board were informed and had reason to believe that advertising for such competitive bids would result in obtaining responsible bids lower than 13.9 cents per cubic yard of fill (see "Plaintiff 2" attached); that as a further part of said conspiracy to defraud, the said Abraham L. Shushan, as President of the Levee Board, did represent falsely, fraudulently and untruthfully, that the contract to be entered into

with the Orleans Dredging Company, Inc., was a renewal of an earlier contract, whereas in truth and in fact it was an entirely new and utterly different contract; that the said Abraham L. Shushan did fraudulently, illegally, unlawfully and immorally do and perform the above acts and things, and influence the Levee Board in other and different ways to authorize him to sign said contract, and did sign said contract, to the detriment and disadvantage of the Levee Board, all in consideration of a bribe which the said R. A. Perry (now deceased) offered, on behalf of himself and of the other defendants herein, and of the Orleans Dredging Company, Inc., and the Standard Dredging Company of New Jersey, to Abraham L. Shushan, of two cents (2¢) per cubic yard on every cubic yard of hydraulic fill placed upon said airport, which said bribe was paid in the manner hereinafter more particularly described, and which amounted to more than the sum of One Hundred Thirty Thousand Five Hundred ($130,500.00) Dollars.

The Bribe.

VIII. Complainant shows that the above bribe was paid to the said Abraham L. Shushan in installments and charged against fraudulent and fictitious accounts of the Standard Dredging Company of New Jersey, and paid in cash to the said Abraham L. Shushan by intermediaries out of funds forwarded to the Standard Dredging Company of New Jersey by the Orleans Dredging Company, Inc. which it had in turn received from the Levee Board. At least two such payments were made before the death of R. A. Perry, and the remaining payments were made after his death pursuant to a verbal agreement between Shushan and Cummins, with the knowledge and consent of Birch, that the payments of the bribe would be continued at the same rate of 2¢ per cubic yard. In two instances the installments on the bribe were paid by the Standard Dredging Company

of New Jersey to Shushan in bonds of the Levee Board which had previously been surrendered by it as installment payments on account of the contract to the Orleans Dredging Company, Inc. The amounts and dates of such payments, and the fictitious accounts on the books of the Standard Dredging Company to which they were charged, all at the direction of defendants Cummins and Birch, and, until his death, Perry, are as follows:

Date	Amount	Charge
1/14/32	$10,000	Mexico
1/16/32	10,000	——
12/ –/32	49,000 (Bonds)	Payment made account commissions and engineering expense on proposed dredging contract at Barcelona, Spain
2/11/33	1,500	——
6/ 3/33	5,000	Ellen
7/22/33	5,000	——
8/ 5/33	5,000	Mexican General Expense Commissions
10/ –/33	35,000 (Bonds)	Mexican General Expense
	$120,500 Total	

At least one additional payment of ten thousand ($10,000) dollars paid by Perry to Shushan before his death is not recorded in the above tabulation.

The Illegality of the Contract.

IX. Complainant shows that Act 73 of the Legislature of Louisiana of 1926 provides, among other things, as follows:

> "• • • all public work to be done, exceeding the sum of five hundred dollars by any parochial, municipal, or other public corporation or political subdivision of the state, • • • shall be advertised and let by contract to the lowest responsible bidder. • • • that the procedure herein shall not be necessary in cases

of extreme public emergency. * * * any contract entered into for the construction of public works, contrary to the provisions of this act shall be null and void."

Complainant further shows that the contract herein for the construction of hydraulic fill for the Orleans Airport substantially exceeded the sum of five hundred dollars; was let and entered into as a part of the conspiracy and upon the recommendation and persuasion of Abraham L. Shushan without advertising, without competitive bidding or the opportunity therefor in the absence of any "extreme public emergency", and without the other safeguards and formalities required by law for the protection of public works contracts; and was so let secretly, surreptitiously, and clandestinely, for the express purpose of shutting out lower and competitive bids, as will more completely appear from the excerpt of the minutes of the Levee Board attached hereto and made a part hereof and marked "Plaintiff 2". Complainant shows that the contract is, therefore, utterly and completely null and void *ab initio.*

X. Complainant further shows that the officers and directors of the Orleans Dredging Company, Inc., and of the parent corporation, Standard Dredging Company of New Jersey, and particularly R. A. Perry, and the other individual defendants herein, knew that said contract was let without advertisement and without competitive bidding or the opportunity therefor, and without compliance with the other safeguards and formalities required by law for the protection of public works contracts; and complainants further show that it was a part of the illegal, unlawful, fraudulent and immoral conspiracy set out above that Abraham L. Shushan procure for the Orleans Dredging Company, Inc., this contract at the price of 13.9 cents per cubic yard of fill without advertisement or competitive bids, and in

an unlawful and illegal manner. Complainant moreover shows that this price of 13.9 cents per cubic yard for fill was based upon an offer of that price in a bid submitted in 1929 by the Orleans Dredging Company, Inc., in connection with a different contract from that involved herein; that the price was based upon conditions existing in the year 1929, at which time labor and materials were at their peak prices; that the procurement in the unlawful and fraudulent fashion above set forth of the contract for hydraulic fill in 1932 at a time when prices for labor and materials had become drastically reduced and depressed as a result of world-wide economic conditions resulted in obtaining said contract at a grossly excessive and unreasonable price, all of which was well known to the defendants herein and wilfully and maliciously contemplated by them.

The Excessive Profits on the Contract.

XI. Complainant shows that as a result of the illegal and unlawful manner in which the contract was entered into, and the secret, clandestine, and surreptitious manner in which it was confected, and as an integral part of the conspiracy herein disclosed, gross, excessive, and unconscionable profits were reaped by the defendants herein through the Orleans Dredging Company, Inc., to the detriment of the plaintiff herein. Complainants further show that the complete cost of the operations to the Orleans Dredging Company, Inc., could not have exceeded the sum of $613,000.00, which represents a net profit of some $291,456.42, or approximately 47.5% on the capital expended on the contract; but complainants show that it is necessary to determine by testimony and the discovery prayed for herein the exact cost thereof. Complainant shows that the defendants and the Orleans and Standard Dredging Companies had for a long period of time been engaged in the

business of dredging and related businesses of hydraulic fill; that they were expert in that field; that the members of the Levee Board were unfamiliar with such matters, and that the members of the Levee Board in authorizing the said contract were grossly and excessively duped and taken advantage of by the overreaching of the Orleans and Standard Dredging Companies, and the defendants herein, and the fraudulent conspiracy and bribery of the President of the Levee Board as set out hereinabove.

The Demands of Complainant.

XIII. Complainant shows, on the facts and things above stated, that the purported contract between the Orleans Levee Board and the Orleans Dredging Company, Inc. was illegal, null, void and of no effect; that pursuant to said null and void contract the total sum of $904,456.42 was paid out of the public funds of the State of Louisiana and of the Orleans Levee Board, an agency thereof, to, or for the account of the corporate defendants herein, through their wholly-owned subsidiary, the Orleans Dredging Company, Inc.; that said payments were made without warrant of law, under mistakes of law, as a result of fraud, illegality, and otherwise as herein alleged, and were ultra vires and beyond the power of the said Levee Board, all to the full and complete knowledge of the Orleans and Standard Dredging companies, upon the fraudulent connivance of the individual defendants herein, and to the grievous loss, injury and damage of the State of Louisiana, and the public fisc thereof, which complainant is entitled to recover and recoup from the defendants herein, as follows:

1. On Account of the Nullity of the Contract

XIV. Complainant is entitled to a judicial declaration of the nullity of the contract above set out, and to have the same rescinded and set aside as illegal, null, void and of no force and effect and to demand

(a) *The Restitution of the Full Contract Price ($904,456.42).*

The complainant is entitled to the restitution of the full and total sum of $904,456.42, as a payment of that which was not due either legally or morally, with interest at the legal rate of five per centum (5%) per annum on the amount, and from the date, of each installment thereof, as money wilfully and knowingly illegally had and received by the Orleans and Standard Dredging Companies, whose debts and liabilities were assumed by the Dredging Realization and Standard Dredging Corporations, defendants herein; and for which the other conspiring individual co-defendants, Cummins, Birch and Shushan, are liable individually and *in solido* and with the said corporate defendants, under the facts of this case, for the return of the entire amount of money disbursed by the Levee Board under said purported contract.

(b) *In the Alternative, Defendants Are Entitled to Retain Only Actual Expenses ($291,456.42.)*

Complainant shows in the alternative, and solely upon the condition that this Honorable Court should decide that complainant is not entitled to the relief above, that under the facts and circumstances set out above, the defendant corporations are not entitled to retain for the account of the Orleans and Standard Dredging Companies more than the actual, necessary expenses properly and reasonably incurred in the performance of the work as a volunteer or *negotiorum gestor*; that those expenses should not have exceeded the sum of Six Hundred Thirteen Thousand ($613,000.00) Dollars at the most, and that the corporate defendants herein, Dredging Realization and Standard Dredging Corporations, are therefore obliged to restore to complainant the sum of not less than Two Hundred Ninety-One Thousand Four Hundred Fifty-Six Dollars and forty-two cents ($291,456.42) with interest thereon at the legal rate of five per centum (5%) per annum from the date of the

completion of the contract. Complainant further shows that the individual defendants herein, Cummins, Birch and Shushan, are liable individually and *in solido* with the said corporate defendants, under the facts of this case, for the amount as set forth above.

2. In the Further Alternative, Defendants Must Disgorge Unconsciensiable Profits

($230,156.42)

XV. Complainant shows in the further alternative, and solely upon the condition that this Honorable Court should decide that complainant is not entitled to the relief above, that the ordinary, usual, reasonable and fair profit on construction contracts generally and on contracts for hydraulic fill is ten per centum (10%) of the cost thereof; that the profit on the work herein was in excess of 47.5%; that under the law of Louisiana and of the United States the duty and obligation was imposed upon defendants and upon the Orleans and Standard Dredging Companies in entering into contractual relationships with agencies of the State of Louisiana to stipulate only for a fair, reasonable and equitable profit upon the work to be done, and not for an unfair, unreasonable and oppressive advantage; that any excessive profits so received, particularly under the facts and circumstances surrounding this case, amounts to an unjust enrichment to the extent of the excess profits which the recipient is under an obligation to repay. Complainant shows that the Orleans and Standard Dredging Companies were thus unjustly enriched at least to the extent of $230,156.42 which the defendants Dredging Realization and Standard Dredging Corporations are bound to restore, and for which the defendants Cummins, Burke and Shushan are liable individually and in solido with the said corporate defendants, under the facts of this case, with interest at the legal rate as above from the date of the completion of the contract.

3. On Account of the Bribe ($130,500.00 and $49,000.00)

XVI. Complainant shows that, over and above and in addition to any other or further liability defendant Abraham L. Shushan has or may have to complainant herein, the said Shushan is bound to restore to the State of Louisiana, as his principal, the total amount of the bribe received by him ($130,500.00) with interest at the legal rate as above on the amount, and from the date of receipt of, each installment thereof, as secret profits unlawfully retained by an agent. Complainant further shows that some time after the receipt of certain Levee Board Bonds as an installment on said bribe, Shushan returned such bonds in the amount of $49,000.00 to the Standard Dredging Co., by whom they were received with the knowledge of defendants Cummins and Birch, in an attempt to confuse and deceive certain United States income tax investigators. Complainants show that these bonds, in the hands of defendants and under the circumstances of this case, were impressed with a trust in favor of complainant herein, and upon their conversion by defendants Birch and Cummins and the corporations herein said defendants became liable as above to complainants therefor over and above and in addition to any other liability they may have to complainant herein.

And, so far as the defendants other than Shushan are concerned, in the further alternative, and solely upon the condition that this Honorable Court should decide that complainant is not entitled to the relief above, then complainant shows that said defendants did conspire to defraud complainant and the Levee Board by paying Shushan, then President thereof, a bribe, and did unlawfully, illegally and knowingly and to the detriment of said complainant and Levee Board divert the sum of $130,500.00 to which complainant and the Levee Board was rightfully entitled to said Shushan, to the detriment and injury of complainant, and for which said defendants are liable, as above, to complainant.

The Need for an Accounting and Discovery.

XVII. Complainant shows that an accounting and discovery of the books and records of defendant corporations, and of the Standard and Orleans Dredging Companies, are necessary to determine and ascertain with precision the amount of the recovery sought under Paragraphs XV (b) and XVI.

Inadequacy of the Remedy at Law.

XVIII. Complainant further shows that it has no adequate remedy at law; that the causes of action herein set forth are properly cognizable in a Court of equity; that a multiplicity of suits are and will be avoided and that the relief herein sought cannot be obtained except in a Court of equity by the exercise of its power to declare the nullity of contracts, and set the same aside, and pronounce them void, and direct the return of that which has been unduly received; that the aid of the Court of equity is necessary for the discovery and accounting and for the other equitable relief herein prayed for.

Prayer for Relief.

Wherefor: the complainant prays for judgment and equitable relief as follows:

1. That this Court decree the contract described above and entered into on the sixth day of March, 1931, between the Orleans Levee Board and the Orleans Dredging Company, Inc., illegal, null, void, and of no effect and rescind, annul, and set aside the same.

2. That the complainant have a decree against the defendants, Claude Cummins, Clarence R. Birch, Dredging Realization Corporation, Standard Dredging Corporation and Abraham L. Shushan, individually and in solido, for the full sum of $904,456.42, with interest at the legal rate of five per centum (5%) per annum on the amount, and from the date, of each installment making up said sum.

3. That in the alternative and solely upon the condition that this Honorable Court should decide that the complainant is not entitled to the relief above prayed for, that the complainant have a decree against the defendants as above mentioned for the total amount of the profits received by the Orleans Dredging Company, Inc., above the actual cost of construction.

4. In the further alternative and solely upon the condition that this Honorable Court should decide that the complainant is not entitled to the relief above prayed for, that the Court determine a reasonable and proper profit to be allowed the Orleans Dredging Company Inc. for the account of the corporate defendants, Dredging Realization Corporation and Standard Dredging Corporation, and that said corporate defendants be required and directed to account to the complainant for all monies of the State of Louisiana received by it on account of profits and to pay to the complainants the excess received of and above such fair and reasonable profits and that the individual defendants, Claude Cummins, Clarence R. Birch, and Abraham L. Shushan be held solidarily liable with said corporations therefor.

5. That complainant have a decree against Abraham L. Shushan for the full sum of $130,500.00, the amount of the bribe herein, with interest on the amount of the various installments from the date of the payment thereof at the legal rate of five per centum (5%) per annum.

6. That complainant have a decree against defendants Claude Cummins, Clarence R. Birch, Dredging Realization Corporation and Standard Dredging Corporation in the full sum of $49,000.00, the value of the bribe bonds returned by Shushan and converted by defendants with legal interest as above from the date of conversion thereof.

7. That in the further alternative, and solely upon the

condition that this Honorable Court should decide that complainant is not entitled to the relief above prayed for, complainant have a decree against the defendants as above, other than defendant Abraham L. Shushan, for the full sum of $130,500.00, being the amount of the bribe paid Shushan as aforesaid, with interest at the legal rate as aforesaid on the amounts of the various installments from the date of the payment thereof.

8. That this Court take and state an account between the complainant and Orleans Dredging Co. Inc., Standard Dredging Co. and the corporate defendants, Dredging Realization Corporation and Standard Dredging Corporation, herein, for the purpose of determining the precise amount claimed herein; and that the complainants have judgment and decrees for the payment by each and all of the defendents of all monies improperly or wrongfully received by each and all of them, or for which each or all of them may be individually and solidarily liable, respectively, upon the accounting, with the responsibility for the transactions set forth in the bill, should this Honorable Court decline to grant the prayer of Paragraph 2 hereof.

9. That the complainant may have such other or further judgment, decrees, or relief as he may be entitled to in the premises and as may be agreeable to equity and to the practice of this Court.

EUGENE STANLEY,
Attorney General,
State of Louisiana;
JAMES J. MORRISON,
Special Assistant Attorney General;
JAMES J. MORRISON,
Executive Counsel.
Louisiana Crime Commission;
N. HALL MCCORD,
Of Counsel.

"PLAINTIFF'S EXHIBIT No. 1."

UNITED STATES OF AMERICA.

SECURITIES AND EXCHANGE COMMISSION.

I, Francis P. Brassor, Secretary of the Securities and Exchange Commission, Washington, D. C., which Commission was created by the Securities Exchange Act of 1934 (15 U. S. C. A., Sec. 78a et seq), and official custodian of the books and records of said Commission, and all books and records created or established by the Federal Trade Commission, pursuant to the provisions of the Securities Act of 1933 and transferred to this Commission in accordance with Section 210 of the Securities Exchange Act of 1934, do hereby certify that attached is a full, true and complete copy of:

Pages 1, 2, 8, and 26, as contained in the application for registration of securities filed with this Commission August 19, 1937 by Standard Dredging Corporation, pursuant to the provisions of the Securities Exchange Act of 1934 as amended, under File No. 1-2973.

In witness whereof I have hereunto subscribed my name and caused the seal of the Securities and Exchange Commission to be affixed this 29th day of May, A. D., 1941, at Washington, D. C.

FRANCIS P. BRASSOR,
Secretary. (Seal).

ORGANIZATION AND GENERAL.

1. Furnish the following information as to the registrant:

(a) Exact name.
Standard Dredging Corporation

(b) Address of principal executive offices.
80 Broad Street, New York, N. Y.

(c) Form of organization.
Corporation.

(d) State or other sovereign power under the laws of which organized.

New Jersey.

(e) Date of organization.

December 21, 1905 as Standard American Dredging Company, and by amendment dated October 17, 1921 the name was changed to Standard Dredging Company, and upon the filing of the Agreement of Merger and Consolidation dated May 5, 1937 in the office of the Secretary of State of New Jersey on September 1, 1937 the name will be changed to Standard Dredging Corporation.

(f) Date of termination of charter or instruments of organization.

Perpetual.

(g) Date upon which the fiscal year ends.

December 31st.

(h) Date and place of annual meetings.

Fourth Monday in March in Jersey City, New Jersey.

2. Give the date of each application pursuant to which registration of any of the registrant's securities on any exchange or exchanges has become effective, and as to each class of securities registered pursuant to such application give the title of issue and name the exchange or exchanges upon which so registered.

Standard Dredging Company made application on or about March 29, 1935 under the Securities Exchange Act of 1934 for the registration of its Convertible Cumulative $2 Preference Stock, no par, and Common Stock, no par, on the Chicago Stock Exchange.

3. As to any securities covered by this application for which separate application is to be made for registration on another exchange, give the title of issue and name the exchange or exchanges upon which to be registered.

Not applicable.

PLAN OF SUCCESSION AND ISSUANCE OF SECURITIES THEREUNDER.

Plan.

4. Describe briefly the general effect of the plan.

The general effect of the agreement of merger and consolidation dated May 5, 1937 is as follows:

(1) The registrant as of September 1, 1937:

a. will retain the plant and equipment of Standard Dredging Company, a New Jersey corporation;

b. will acquire the plant and equipment of National Dredging Company, a New Jersey corporation, and its holdings of stock in Tampa-Clearwater Bridge Company;

c. will become the owner of all the capital stock of Dredging Realization Corporation, a New Jersey corporation, which Corporation will be the owner of certain real estate, mortgages, stock and accounts receivable held by Standard Dredging Company, a New Jersey corporation. The holders of the Twenty Year Liquidating Non-Interest Bearing Notes of Dredging Realization Corporation will be entitled to one vote for each $15 face amount of such notes.

(2) The registrant will be obligated for the liabilities of Standard Dredging Company, a New Jersey corporation, and will assume the liabilities of National Dredging Company, a New Jersey corporation, including the $1,000,000 face amount of Marine Preferred Mortgage 4% Note issued by National Dredging Company, a New Jersey corporation.

(3) The stockholders of Standard Dredging Company, a New Jersey corporation, and National Dredging Company, a New Jersey corporation, will be entitled to receive the securities set forth in answer to subdivision (a) of item 5.

Claude Cummins
President and Director of registrant.
Standard Dredging Company, Director and President
Standard Equipment Company, Director and President
United Dredging Company, Director and President
Orleans Dredging Company, Director and President

Charles B. Clarke
Vice-President and Director of registrant.
Standard Dredging Company, Director and Vice-President
United Dredging Company, Director and Vice-President

Walfred L. Paulson
Vice-President, Secretary and Director of registrant.
Standard Dredging Company, Director, Vice-President and Secretary
United Dredging Company, Director, Vice-President and Secretary
Orleans Dredging Company, Director, Vice-President and Secretary
Standard Equipment Company, Director and Secretary

Clarence R. Birch
Treasurer and Director of registrant
Standard Dredging Company, Director and Treasurer
Standard Equipment Company, Director and Treasurer
United Dredging Company, Director and Treasurer
Orleans Dredging Company, Assistant Secretary

W. A. Campbell
Vice-President and Director of registrant
North American Dredging Company of Texas, Director and President
Standard Dredging Company, Director and Vice-President

Leland E. Yeager
Director of registrant.
Standard Dredging Company, Director
Standard Equipment Company, Director

Donald D. Geary
Member of the firm of Kirlin, Campbell, Hickox, Keating and McGrann, attorneys for Standard Dredging Company for more than five years last past.
Director of registrant.
Standard Dredging Company, Director

Charles F. Guthridge
Vice-President of registrant.
Standard Dredging Company, Vice-President.
United Dredging Company, Vice-President

George G. Daneri
Assistant Secretary and Assistant Treasurer of registrant.
Standard Dredging Company, Assistant Secretary and Assistant Treasurer
United Dredging Company, Assistant Secretary and Assistant Treasurer

The registrant is a corporation and therefore Items 30, 31 and 32 are omitted.

This application comprises:

(a) The application proper, containing pages numbered 1 to 26 consecutively, and insert pages numbered F-1 to F-57, inclusive.

(b) The following exhibits:

Exhibit A. Copy of the Agreement of Merger and Consolidation dated May 5, 1937.

Exhibit B. Copy of the Certificate of Incorporation and amendments thereto of Standard Dredging Company, a New Jersey corporation, and copy of the By-Laws of Standard Dredging Company, a New Jersey corporation.

Exhibit C. Copy of Marine Preferred Mortgage dated January 1, 1937.

Exhibit D. The rights of the holders of the Convertible Preferred Stock and Common Stock referred to in the answer to Item 25 are set forth in Article III of the Agreement of Merger and Consolidation, a copy of which is filed herewith as Exhibit A.

Exhibit E. Specimen of Convertible Preferred Stock and Common Stock of registrant not available at this time.

Exhibit F. Not applicable.

Exhibit G. Copies of agreements between United Dredging Company, a Delaware corporation, and Standard Dredging Company, a New Jersey corporation, and Scott M.

Handley, dated August 1, 1936 and May 7, 1937, respectively.

Exhibit H. Not applicable.

This application is filed subject to the instructions contained in the instruction book for this form as approved under date of February 24, 1937, and as amended to and including April 7, 1937.

Upon the basis of the statements and documents comprising this application the undersigned hereby applies for registration pursuant to Section 12 (b) and (c) of the Securities Exchange Act of 1934 of the securities specified on the facing sheet of this application on the respective exchanges there specified.

August 6th, 1937.

STANDARD DREDGING COMPANY,
By CLAUDE CUMMINS,
President.

[SEAL.]

Attest:

C. R. BIRCH,
Asst. Secy.

"PLAINTIFF'S EXHIBIT No. 2."

Excerpt From the Minutes of the Meeting of the Board of Levee Commissioners of the Orleans Levee District Held February 21, 1931.

President Shushan submitted, for the information of the Board, a proposed supplemental contract to be made with the Orleans Dredging Company, for the fill on the Airport, at their previous bid of 13.9 cents per cubic yard of fill. He stated the same was a renewal of that company's previous price submitted in competitive bidding after thirty days advertising, but which work was held up on account of the Court injunction by the camp owners in Zone 5 of the Lake Front area; that following the usual procedure in matters of this kind, a contract was signed between the Orleans Dredging Company and the Board and bond to cover was furnished by the Orleans Dredging Company; that Court proceedings in the form of an injunction by the camp owners, as taxpayers, was taken out and prevented this work going forward, and in a spirit of cooperation with this Board the Orleans Dredging Company agreed, after some persuasion, to suspend their contract and filed no claim of any kind against this Board in connection with the same, and now that it is possible to proceed with this work the Dredging Company has asked a renewal of that contract under the terms and conditions and at the same price prevailing at the time of their bid. He stated Chief Engineer Klorer has informed him that, taking into consideration all of the elements of this work and the fact that the contractor will be required to dredge his material a considerable distance out into the Lake, this is a very favorable price, and General Counsel Wilkinson has rendered a written opinion in which he advises that the Board has the legal right to renew the contract under these conditions, and in consideration of the friendly spirit of cooperation shown by the contractors towards this Board, at a time when the Board found itself unable to proceed, it is only fair that the contract be renewed.

Chief Engineer Klorer confirmed the statement made by President Shushan and stated since his last conversation with Mr. Shushan on the subject a certain contractor had

approached him in the interest of having this work readvertised, stating that he was in position to submit a much lower bid at a considerable saving to the Board, but the proposition was not put in writing by the contractor but was given to him orally and he has no assurance of this being done. Mr. Klorer reaffirmed the statement of President Shushan, as to the price being a favorable one under the conditions required for this fill and because of the nature of the material to be secured and the distance from which it would have to be pumped.

Mr. Waguespack stated that he did not think it would be fair, under any circumstances, for this Board to peddle the price of any contractor, especially when a price is given in competitive bidding under sealed bids after advertisements being run for 30 days inviting bids, particularly in this case where such splendid cooperation was given the Board at a time when it was possible for the low bidder to make large claims against the Board. He stated anybody can underbid a known price, and he therefore did not think the Board should entertain any other contractor but should renew the previous contract with the Orleans Dredging Company.

Mr. Thomas stated there was a doubt in his mind as to whether or not the job should be readvertised or the previous contract renewed and, while the price in the previous contract was a favorable one, he thought it might be possible, if the work was readvertised, to receive a better price.

Commissioners Whiteman and Malone stated they were in agreement with the position of Mr. Shushan, as they felt the price was a favorable one, and in justice to the firm submitting the same in open competition they did not think it fair to peddle the price, and, unless the Board could be given definite assurances of a material saving in the cost, they would be opposed to readvertising and would favor a renewal of the previous contract, especially since the Chief Engineer and the General Counsel are in agreement that the Board's interests can be best served that way.

Mr. Waguespack stated that he was fully in accord with the expressions of Messrs. Shushan, Whiteman and Malone, and concurred in their opinions about this matter, and he would therefore move that the President, or, in his absence or incapacity to act, the President Pro-Tem, be and he is hereby authorized and empowered to enter into a renewal

of the previous contract with the Orleans Dredging Company at the price of 13.9 cents per cubic yard, along the lines of the supplemental agreement exhibited to the Board, as drawn by the Chief Engineer and approved by the General Counsel. Mr. Whiteman seconded the motion and the same carried unanimously.

"PLAINTIFF'S EXHIBIT No. 3."

Contract Between Board of Levee Commissioners of the Orleans Levee District and Orleans Dredging Company, Inc., Dated March 6, 1931.

UNITED STATES OF AMERICA, STATE OF LOUISIANA, PARISH OF ORLEANS, CITY OF NEW ORLEANS.

No. —.

CONTRACT BOARD OF LEVEE COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT With ORLEANS DREDGING CO., INC.

BE IT KNOWN, that on this 6th day of the month of March, in the year of our Lord one thousand nine hundred and thirty-one of the Independence of the United States of America, the one hundred and fifty-fifth BEFORE ME N. H. POLMER a notary public, duly commissioned and qualified, in and for the City and Parish of Orleans, therein residing, and in the presence of the witnesses hereinafter named and undersigned.

PERSONALLY CAME AND APPEARED:

1st: A. L. SHUSHAN, ESQ., President of and herein representing and acting for the Board of Levee Commissioners of the Orleans Levee District, an Agency of the State of Louisiana, by virtue of a resolution of said Board adopted at a meeting convened on the 21st day of February, 1931, a duly certified copy of which resolution is hereto attached and made part hereof; said Board of Levee Commissioners being hereinafter called "The Board", or "the said Board."

2nd: ORLEANS DREDGING COMPANY, INC. hereinafter called the "Contractor", or "the said Contractor," or W. L. DUEASE, Secretary-Treasurer of and herein representing the Orleans Dredging Co., Inc., hereinafter called "the Contractor"; the said W. L. DUEASE being hereto duly authorized by virtue of a resolution of the Board of Directors of said Orleans Dredging Co., Inc., adopted at a meeting held on the 5th day of March, 1931, a duly certified copy of said resolution being hereto attached.

WHO DECLARED:

Whereas the Board of Commissioners of the Orleans Levee District did on March 6, 1929 advertise for bids for the construction of a Bulkhead and a hydraulic fill on the south shore of Lake Pontchartrain east of the Industrial Canal for the purpose of creating a site to be used as an Air-port, and

Whereas, two (2) bids were received for this work on April 8th, 1929, the date specified for the opening of bids, of which two bids, that of the Orleans Dredging Co., Inc., was the lowest and most acceptable to the Orleans Levee Board; and

Whereas as a result of the opposition of certain camp-owners on the Lake Front in the vicinity of the proposed work who were unwilling to vacate or remove their camps, the Board of Commissioners of the Orleans Levee District was enjoined from accepting this bid and entering into contract with the Orleans Dredging Co., Inc., on the grounds that the Constitutional Amendment authorizing the work comprising the Lake Front Development including the construction of an Air-port, did not permit any work of the character proposed being undertaken in Zone 5, lying east of the Industrial Canal, until after certain other work was completed in Zones 1, 2 and 3—which other work was not at that time completed; and

Whereas; the contention of the camp-owners was upheld in the State Supreme Court, and it was necessary thereafter to pass remedial legislation in the shape of a Constitutional Amendment that had to be submitted to the voters of the State of Louisiana for approval at a general state-wide

election, in order to give the Board of Commissioners of the Orleans Levee District the necessary authority to construct this proposed Airport in Zone 5 of the Lake Front Development; and

Whereas; said Constitutional Amendment was approved in the general State Election held on November 4th, 1930, and the Board of Commissioners of the Orleans Levee District is now free to proceed with work originally contemplated in Zone 5, east of the Industrial Canal, provided such work is limited to the airport construction; and

Whereas, during the interval between the original date of opening the bids and the present time, additional study given to the subject of the Airport indicates the advisability of increasing the dimensions of the Airport and also, for engineering reasons, the advisability of substituting a concrete sheet-pile bulkhead for the steel sheet-pile bulkhead originally specified, and

Whereas, the Board of Commissioners of the Orleans Levee District has entered into a contract with the Fuller Construction Co., Inc., for the construction of a concrete sheet-pile Bulkhead, upon which contract, work will shortly begin; and

Whereas, the Orleans Dredging Co., Inc., the low bidder on the combined work of steel sheet-pile bulkhead and hydraulic fill, is agreeable to entering into a contract with the Board of Commissioners of the Orleans Levee District for placing the hydraulic fill at the price quoted at the public letting previously referred to, namely, thirteen and nine-tenths (13.9) cents per cubic yard in place, and the Orleans Dredging Co., Inc., if awarded this item of work, will make no claims for being deprived of all the other items of work mentioned in the said proposal; and

Whereas, the Board of Commissioners of the Orleans Levee District is of the opinion that the price quoted for the hydraulic fill is a fair and reasonable bid to the Orleans Levee District.

Therefore, it is mutually agreed to and assented to by the Orleans Dredging Co., Inc., and the Board of Commissioners of the Orleans Levee District to permit the modification of the proposal submitted by the Orleans Dredging

Company, Inc., on April 9th, 1929 in such manner as to exclude from that proposal, all items of work referring to work other than the placing of the hydraulic fill within the bulkhead (see Item 6) and to specifically exclude from the specifications all paragraphs and provisions that apply to such excluded items of work, that is items 1, 2, 3, 4, 5, 7 and the said proposal of the Orleans Dredging Co., Inc., so modified, is accepted by the Board of Commissioners of the Orleans Levee District;

It is further understood and agreed that the Board of Commissioners of the Orleans Levee District shall provide a concrete sheet-pile bulkhead of such design and construction that it will retain the fill to be placed by the Orleans Dredging Co., Inc.,

Provided that the required date for beginning the work will be within thirty days after notification is given to the Orleans Dredging Co., Inc., by the Chief Engineer of the Orleans Levee District, in lieu of "within thirty days after the signing of the contract," as stated in the proposal; And, provided further, that the time required to complete the fill will be seven months from and including the thirtieth day after the date of notification to begin work, in lieu of *six* months "from and including the thirtieth day after the signing of the contract," and also in lieu of the specified rate of 600,000 cubic yards per month as stated in the proposal. And provided further that due to the increased dimensions of the proposed airport, *the estimated quantity of the fill has correspondingly been increased to 4,000,000* cubic yards from the 3,000,000 cubic yards estimated as stated in *paragraph 13 of the Special Specifications* and that the time for completion will apply not only to the 4,000,000 cubic yards presently specified as the quantity in the proposal, but *shall also include the 50% additional quantity permitted under the provisions of the specifications.*

And provided further; that for any delayed completion beyond this time of completion, the contractor shall be charged $200.00 per calendar day demurrage as acknowledged and liquidated damages and on the other hand shall be allowed a bonus of $200.00 per calendar day for every

day that the dredging operations shall have been completed in advance of the specified time for completion.

And provided: that in lieu of obtaining the material for the fill from the lake bottom "at a distance of not less than 2000 feet from the front lake side of the bulkhead" it shall be taken from two pit areas shown on Drawing L. D. 1707 dated February 4th, 1931 hereto attached and forming a part of the proposal, and paraphed "Ne Varietur" by me, Notary for identification. The material obtained from Pit A (approximately two million cubic yards) is to be used in constructing the fill to the approximate elevation of Lake level over the entire area of the airport site, and the material obtained from Pit B, more sandy in character, is to be superimposed and utilized in bringing the fill to final grade as shown on blue print L. D. 1707.

It is further provided that upon completion of the fill, if same should be above the prescribed grade, contractor shall not be required to remove the excess fill and it shall make no claim for payment for said excess.

It is further provided that the Board of Commissioners of the Orleans Levee District has full authority to increase the quantity provided in the original proposal, to such quantity as may be necessary to complete the project according to plan L. D. 1707 dated February 4, 1931, or to increase the elevations as shown on said plan.

It is further provided that the said Board of Commissioners shall make payments to the said contractor, monthly, for all filling placed in accordance with this contract. A retainer of ten per cent (10%) will be reserved from each monthly payment until the total of said retainers amounts to the sum of Fifty Thousand Dollars ($50,000.00) after which time all monthly payments shall be made in full to said contractor. Final payment, including above mentioned retainer of $50,000.00, less any amount which may be due by said Contractor to said Board hereunder, will be made to said Contractor 90 days after completion and acceptance of this contract. Said monthly estimates are to be made without prejudice to the right of either party to this contract.

All the requirements, terms, conditions, obligations and benefits and all the stipulations of the original contract are reiterated herein and made a part hereof as though copied herein in extenso if not inconsistent herewith.

BOND

And now to these presents, personally came and intervened UNION INDEMNITY COMPANY, herein represented by Joseph Meyers, Attorney in Fact WHO DECLARED:

That he has read and taken cognizance of the above and foregoing contract between the Board of Levee Commissioners of the Orleans Levee District and Orleans Dredging Company, Inc., Contractor, and binds said Company in solido with the said Contractor unto the Board of Levee Commissioners of the Orleans Levee District in the sum of Three Hundred Fifty Thousand Dollars ($350,000.00) as security for the faithful and satisfactory performance by the said Orleans Dredging Company, Inc., of all the clauses and conditions of this contract and the payment by said Contractor and by all sub-contractors for all work done, labor performed and material furnished under this contract, in accordance with the law, the condition of this obligation being that if the said Orleans Dredging Co., Inc., Contractor shall well, truly and faithfully and satisfactorily perform all of the obligations assumed by itself under this contract and payment be made by said Contractor and by all sub-contractors for all work done, labor performed, and material furnished under this contract in accordance with law, then this bond shall become null and void, otherwise, to remain in full force and effect.

The said surety consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans, State of Louisiana and formally waives any plea of jurisdiction on account of residence elsewhere in the event of suit under the contract and bond and the surety herein shall be limited to such defense only as the principal of this bond could make.

THUS DONE AND PASSED, in my office at the City of New Orleans on the day, month and year herein first above written, in the presence of Charles J. Donner and Richard Leche competent witnesses who hereunto sign their names with

the said appearers and me, Notary, after reading of the whole.

BOARD OF LEVEE COMMISSIONERS
ORLEANS LEVEE DISTRICT,
(Signed) By A. L. SHUSHAN,
Pres.
ORLEANS DREDGING CO., INC.,
(Signed) By W. L. DUEASE,
Sec'y.-Treas.
UNION INDEMNITY COMPANY,
(Signed) By JOS. C. MAYERS,
Attorney-in-Fact.

Witnesses:
(Signed) RICHARD W. LECHE,
CHAS. J. DONNER.

Approved:
(Signed) By JOHN KLORER,
Chief Engineer.

Approved:
(Signed) JAMES WILKINSON,
General Counsel.

(Signed) N. H. POLMER,
[NOTARIAL SEAL.] *Notary Public.*